



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

November 21, 2013

Daniel J. Powell
Office of the Governor
Governor Edmund G. Brown Jr.
Sacramento, CA 95814

RE: Your Request for Informal Assistance
Our File No. I-13-143

Dear Mr. Powell:

This letter responds to your request for advice on behalf of Governor Brown regarding the gift provisions of the Political Reform Act (the "Act").¹ Because you have not provided any specific facts with respect to your request and are seeking general information, we are treating your request as one for informal assistance.²

QUESTION

When commercial flights are not readily available or convenient, if the Governor accepts a ride on a privately-owned airplane to attend an event as an official function of the Office of the Governor (the Office), is the acceptance of that flight restricted by the gift limits imposed by Section 89503?

CONCLUSION

No. Travel provided to the Governor to perform an official function of the Office, when commercial flights are not readily available or convenient under the circumstances similar to those you describe (restated below), does not provide a "personal benefit" and therefore does not constitute a gift under the Act.

¹ The Political Reform Act (the "Act") is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed).

FACTS

You have provided the following background information:

Governor Brown regularly attends events in his official capacity throughout the State of California. As recent examples, the Governor has traveled to sign a bill in a location particularly affected by the new law; visited a foreign delegation stopping in California; attended the funeral of a law enforcement officer; and inspected the ongoing devastation caused by a wildfire. On trips like these, the Governor is acting in his official capacity and not for his own personal benefit.

For most of his travel, commercial flights are readily available and used by the Governor. However, given that California is one of the largest states in the nation, there are not always commercial flights available or convenient to reach the less populated areas. Unlike many other states, the Governor's Office does not have an aircraft at its disposal for use on official state business. In order to ensure that the Governor can properly exercise his duties in all parts of the state, you would like confirmation that the Governor be allowed to accept donated flights in private airplanes for trips taken in his official capacity.

You also add that:

"Historically, accepting donated flights did not raise an issue under Government Code section 89503 in the first instance because the value of the plane ride was calculated based on the value of equivalent commercial flights, which typically would not exceed the gift limit. Currently, however, a donated flight is valued based on the cost of chartering or renting a plane for the travel in question. [Citations omitted.] As a result, the value of travel in a privately-owned plane often exceeds the current gift limit."

You also asked via telephone conversation if we could extend our analysis to senior staff at the Governor's Office that often times travel with the Governor for the same governmental purposes.

ANALYSIS

Section 82028 defines "gift" as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received ..."

The original provisions of the Act did not include any prohibitions on gifts or honorarium, other than from a lobbyist. The original definition of gift stated:

""Gift' means any payment to the extent that consideration of equal or greater value is not received...." (Section 82028, Proposition 9, California Primary Election, June 4, 1974.)

While there were no limits on the amount of a gift,³ except for those received from lobbyists, there were also no exceptions to what was considered a gift. For elected officials, there were also no exceptions for what sources were reportable.⁴ Because of the broad definition provided in the Act, the Commission was immediately faced with determining what types of benefits the Act was intended to regulate through its reporting process.

Over the years, through statutory amendments, regulations, Commission Opinions and staff advice letters, a complex set of different rules and exceptions developed that applied in making the determination of what constitutes a gift. These amendments or interpretations covered such elements as “personal benefit,” gifts from family members, home hospitality, acts of neighborliness, acts of human compassion, bona fide dating relationship, reciprocal gifts, wedding gifts, holiday gifts exchanges, bereavement offerings, gifts from long established friends, and gifts made to the official’s agency. In 2011, the various rules that had been developed over the years were examined by the Commission, revised, and consolidated into a single set of rules applicable to gifts. The exceptions are now entirely contained under Regulation 18942.

This year, the Commission followed up on the gift revisions with a comprehensive review of the rules pertaining to travel payments. As part of updating those rules, the Commission examined the relationship between travel payments made in connection with governmental duties as opposed to those providing a personal benefit. This “personal benefit” examination resulted from an amendment to the Act’s definition of gift in 1997.⁵ The addition of this “personal benefit” language had not been significantly addressed by the Commission before this project began.

This examination of the personal benefit requirement was limited to its application to travel payments made to perform governmental business and expanded the principal first developed in the Commission’s Stone Opinion in 1977. (*In re Stone*, 3 FPPC Ops. 52.) The Stone Opinion, which coincidentally involved private airplane travel to city officials, led to the development of the “gift to agencies” principle.

The new provisions of Regulation 18950.1 replace and expand the provisions of the formerly established payments-to-agency regulation and only deals with procedures for accepting outside travel payments to perform official government agency business. The provisions of Regulation 18950.1 were intended to address the most common types of situations that typically occur on a broad basis for many agencies dealing with outside payments made to accomplish agency business, and were generally taken from examples

³ Gift limits were imposed under Proposition 112, adopted in June 1990. The current gift limit is \$440.

⁴ Even holiday, birthday, anniversary, and other such presents received from a loved one were theoretically reportable.

⁵ “82028 (a) ‘Gift’ means, except as provided in subdivision (b), any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received....”

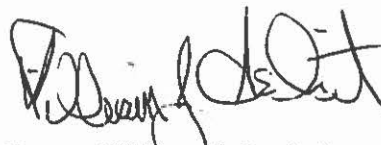
provided to us or situations addressed under our advice procedure. They were intended to establish a "safe harbor" for travel payments that met these provisions and followed the procedures established by the regulation. You are therefore, correct in your understanding that the examples provided therein are not exhaustive.

Given the above, and based on the examples you have provided where commercial flights are not readily available or convenient to reach areas of the state where the Office determines that the Governor's presence, and the presence of senior staff, is necessary to carry out his duties, whether official or ceremonial, and because of the unique breadth of the responsibilities of the Governor's Office, these payments may be accepted under the provisions of Regulation 18950.1.⁶ Although these provisions will not go into effect until January 1, 2014, the delay in the effective day of the regulation was to allow the Commission to revise and adopt a new Form 801 to be used for reporting the travel payments covered by the regulation. Because the new procedures have been adopted, expressing the intent of the Commission to follow the new procedures, and the form has been developed and is expected to be approved at the January 2014 meeting as a matter of course, the new reporting procedures apply immediately. However, because under the new regulation travel payments are reported within 30 days of the close of a calendar period, any travel incurred between now and the end of this year under this regulation must be reported by January 30, 2014.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel



By: William J. Lenkeit
Senior Counsel, Legal Division

WJL:jgl
I:\AdviceLtrs\13-143

⁶ Please note that Article XII, Section 7 of the California Constitution states, in relevant part: "A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office." Please contact the California Attorney General's Office if you have questions regarding this provision.